

The Honorable Robert S Lasnik

**JAMES MCDONALD
14840 119th PL NE
Kirkland, WA 98034
Phone (425) 210-0614
In Pro Per**

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

In Re:) **NO.: C10-1952RSL**

JAMES MCDONALD Plaintiff
v
ONEWEST BANK, FSB, et al., Defendant

**Motion to Strike Declaration of Heidi Buck
Response to Plaintiff's Motion to Enforce**

**TO: CLERK OF THE U.S. DISTRICT COURT
HEIDI E. BUCK, Attorney for Defendants**

COMES NOW PLAINTIFF, James McDonald, and moves the court to strike the Declaration of Heidi Buck in support of Defendant's Response to Plaintiff's Motion to Enforce TRO.

I. FACTS

1.1 Heidi Buck, as attorney for Defendants OneWest, MERS and Northwest Trustee executed a Declaration in Support of Defendant's Response to Plaintiff's Motion to Enforce the Court Order for Preliminary Injunction on February 15, 2011.

II. ARGUMENT

2.1 Opposing Counsel is testifying to facts beyond her personal knowledge and cannot guarantee the actions or intentions of her clients. She does not have first hand knowledge of the facts and therefore lacks competence to testify to any fact or intention that she learned from others. Further she cannot be considered as competent under the advocate-witness rule. As per the case law below, an attorney cannot

1 provide testimony unless all other sources are exhausted. Counsel has not proven that she has no other
2 witness to call to make this declaration and instead presumes to testify herself. *United States V. Armedo-*
3 *Sarmiento*, 545 F.2d 785 (2d Cir. 1976); *UNITED STATES V. JOHNSTON*, 664 F.2d 152 (7th Cir. 1981);
4 *UNITED STATES V. BUCKHANON*, 505 F.2d 1079 (8th Cir. 1974); *UNITED STATES V WEST* 680 F.2d
5 652 (9th Cir. 1982); *LAU AH YEW V DULLES*, 257 F.2d 744 (9th Cir. 1979).

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7 **III. CONCLUSION**

8 For the foregoing reasons Plaintiff requests the Court order to Strike the Declaration of Heidi Buck
9 and the accompanying Response to Plaintiff's Motion to Enforce Court Order in its entirety as it heavily
10 relies on the opposing counsel's testimony.

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12 **DATED February 16, 2011**

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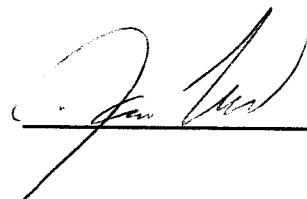
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James McDonald
Pro Se

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8 UNITED STATES DISTRICT COURT
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12 AT SEATTLE

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14 In Re:) NO.: C10-1952RSL
15 JAMES MCDONALD)
16 Plaintiff) Declaration of Service
17 v)
18 ONEWEST BANK, FSB, et al.,)
19 Defendants.)
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21
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23 CERTIFICATE OF Service

24 I hereby certify under penalty of perjury of the laws of the State of Washington that I
25 electronically sent a true and correct copy of the Plaintiffs Motion to Strike Declaration of Heidi
26 Buck, by James McDonald, on the 16 day of February, 2011 to the parties listed below.

27 DATED this 16 day of February, 2011.

28
29 By: 
30 James McDonald
31 Pro Se
32
33

34 Routh Crabtree Olsen, P.S.
35 13555 SE 36th St, Suite 300
36 Bellevue, WA 98006
37
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Certificate of Service

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